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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	
	)	CC Docket No. 94-129
Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers	)	FCC 98-334

SBC'S PETITION FOR RECONSIDERATION AND FOR CLARIFICATION

COMES NOW SBC Communications, Inc.[1] ("SBC") to file a Petition for Reconsideration and for Clarification of the Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 94-129 ("Order"). In its Request for Reconsideration SBC requests reconsideration of 47 C.F.R. ∋64.1180(e) of the Order that would require the authorized carrier to bill and collect charges on behalf of the alleged unauthorized carrier when a determination is made that no slam occurred. In its Request for Clarification, SBC will delineate those portions of the Order that require interpretation or where there appears to be a difference between the requirements adopted in the rules and the requirements explained in the language of the Order.

[1] SBC Communications Inc. is the parent company of various subsidiaries, including telecommunications carriers. These subsidiaries include Southwestern Bell Telephone Company ("SWBT"), Pacific Bell, Nevada Bell, and The Southern New England Telephone Company ("SNET"). The abbreviation "SBC" shall be used herein to include each of these subsidiaries as appropriate in the context.

I. Petition for Reconsideration

SBC strongly urges the Commission to reconsider its requirement that the authorized carrier must bill and collect for the alleged unauthorized carrier when the authorized carrier determines that no slam has occurred. Paragraph 42 of the Order provides in pertinent part that:

> If the originally authorized carrier decides that the subscriber did in fact authorize a carrier change to the carrier making the change, it shall place on the subscriber's bill a charge equal to the amount of charges for which the subscriber was previously absolved. Upon receiving this amount, the originally authorized carrier shall forward this amount to the carrier making the claim.

It is the position of SBC that the alleged unauthorized carrier should be allowed to rebill its own charges to the customer. The provision as written, places the authorized carrier in a very awkward position with the customer, while not benefiting the alleged unauthorized carrier. In this situation, the customer has alleged a slam when, in fact, the carrier change was properly authorized. Whether it was a misunderstanding or an intentional act, the executing carrier, the authorized carrier and the unauthorized carrier are all innocent parties in this particular set of circumstances. SBC asks the Commission to reconsider the effects on each of these three entities and change the rule to allow the alleged unauthorized carrier to re-bill its own charges, including any change charges it has paid, and to collect those charges from the customer. The alleged unauthorized carrier is in a much better position to bill its own charges, to know what services it is billing for and to, perhaps, make arrangements with the customer for payment. If the subscriber refuses to pay its bill, the alleged unauthorized carrier is in a better position and is the entity that should pursue collection.

In addition, since the customer is continuing as a customer of the authorized carrier after the dispute has been resolved in favor of the alleged unauthorized carrier, the

authorized carrier is put in an untenable position of pursuing collection of the charges from that customer.

Further, as the authorized carrier in this situation, SBC has no provisions in place for producing a separate bill page or separate bill bearing the name of a Competitive Local Exchange Carrier ("CLEC") with whom it has no billing and collection agreement.[2] SBC will have no way of knowing the type of charges being submitted, the validity of the individual charges, the format in which those charges must be billed, etc., such as would be specified in the agreements SBC has with Interexchange Carriers ("IXCs. Nor is it likely that an IXC would have an automated billing system that is capable of producing a bill on behalf of another carrier on an automated basis. The situation is further complicated by some of the state statutory requirements as to the specificity required for telephone bills.

The alleged unauthorized carrier has already had to provide proof of verification to the authorized carrier, its competitor, along with the charges billed to the subscriber. Even though a determination has been made that the change it submitted was valid, the alleged unauthorized carrier must now depend upon its competitor to properly bill and collect its charges. In fact, if the amount of the charges is small enough, the alleged unauthorized carrier may prefer to write off the charges, in hopes of building customer goodwill for future marketing efforts. In other cases, the charges may be substantial and the alleged unauthorized carrier may want to vigorously pursue collection of its charges, or offer the customer installment payments. Regardless of the particular circumstances, whenever an SBC company is the alleged unauthorized carrier that has been absolved of a slamming charge, SBC does not want a competitor to issue a bill on its behalf; rather, it must have control of its own billing arrangements. Section 64.1180(e)(1) of the rules

[2] SBC does not provide Billing and Collection services to CLECs.

currently prevents the alleged unauthorized carrier from billing its legitimate charges to what has been determined to be its legitimate customer for those charges.

II. Petition for Clarification

A. Clarification of the Slamming Dispute Resolution Procedure

The procedure established in the Order for resolving disputes between carriers and customers cannot be implemented without first considering the local exchange carriers ("LECs") current practices and procedures. The LEC's Primary Interexchange Carrier ("PIC") Switchback offering must also be considered. Finally, applying all of the above in a situation where the LEC is not only executing carrier, but also a provider of billing and collection services for the unauthorized carrier adds more confusion. Clarification is required in each of those situations.

1. Impact on Current Practices and Procedures

The first apparent change to current practices and procedures is that the authorized carrier, rather than the LEC acting as executing carrier, is responsible for making the determination as to the validity of the letter of authority ("LOA") or other verification in an alleged slamming situation. Today, when a customer calls the LEC to lodge a slamming complaint, the LEC, acting as executing carrier, issues a carrier change order to return the customer to its former carrier, credits the customer's bill for the initial change charge[3] and bills the unauthorized carrier for both the original change charge and the second change charge to return the carrier to its original carrier.[4] Then, if the alleged unauthorized carrier submits proof of authorization, the LEC investigates to determine the validity of that claim. If a determination is made that the carrier change was

[3] Normally, a carrier change charge will have been billed to either the customer or the carrier in accordance with the carrier's instructions in the first carrier change order. In the vast majority of cases, that change charge is billed to the end user customer.

[4] This example assumes that the unauthorized carrier does not subscribe to the PIC Switchback Tariff.

authorized, both carrier change charges are removed from the carrier's bill and re-billed to the customer. If a determination is made that the change was not properly authorized, both change charges remain on the carrier's bill and the carrier is billed the tariffed unauthorized PIC change charge.

The slamming dispute resolution procedures laid out in the Slamming Order, however, places responsibility for that determination squarely on the authorized carrier. In Rules 64.1170(a)(1) and 64.1180(c), reference is made to the unauthorized carrier submitting proof to the authorized carrier that the carrier change order was properly authorized. There is no requirement in the rules or in the Order for the unauthorized carrier to submit such proof to the executing carrier. However, although it is clear that the LEC, acting as executing carrier, is no longer obligated to investigate or make such determination, it is not completely clear how the two change charges are to be handled under the new slamming dispute resolution procedures.

Under the new procedures when a customer calls a LEC to report an unauthorized carrier change, it is clear that the LEC is to immediately issue an order to return the customer to its former carrier. That change, however, triggers the second carrier change charge. To whom does the LEC bill that second charge? Is anything to be done at that time about the initial carrier change charge that has already been billed to the customer? Paragraph 37 of the Order, seems to assume that the authorized carrier or the customer has paid the change charges. That sentence reads as follows:

> By requiring the unauthorized carrier to pay the change charge **to the authorized carrier**, we ensure that neither the authorized carrier nor the subscriber incurs additional expenses in restoring the subscriber to his or her preferred carrier. [Emphasis added]

Pursuant to the provision set forth above, it is clear that the unauthorized carrier is to pay the change charge to the authorized carrier, but the reason for that requirement is not so clear. Payment of the change charges by the unauthorized carrier to the authorized

carrier would accomplish the goal of ensuring that neither the authorized carrier, nor the subscriber, incurs additional expenses to achieve that restoral, even if they had already paid those charges.[5]

Paragraph 37 in the Order is confusing on this issue. The first part of the paragraph makes it sound as if the Commission is codifying the requirement that the LEC (acting as executing carrier) is to continue billing the carrier change charge necessary to return the customer to its originally authorized carrier to the unauthorized carrier.[6] Yet, if that was the intent, then there is no reason that the unauthorized carrier would be paying the change charge to the authorized carrier; it would be paying the charge to the LEC. Continuation of the current practice would also mean that the alleged unauthorized carrier could be required to produce proof of authorization to both the executing carrier and the authorized carrier at or about the same time.

SBC requests clarification that the LEC acting as executing carrier is no longer obligated to investigate or make a determination as to the validity of the initial carrier change. In addition, SBC seeks clarification as to which party is to be billed the carrier change charges when the customer is returned to its authorized carrier.

2. PIC Switchback Tariff

Application of the PIC Switchback offering in the SBC tariffs is not questionable. SBC seeks clarification that the PIC Switchback offering in the SBC FCC tariffs should not be withdrawn as a result of the Order. From a reading of the Commission rules and

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[5] The assumption here is that the first carrier change order was unauthorized.

[6] That language reads as follows: "We also require the unauthorized carrier to pay for the expenses of restoring the subscriber to his or her authorized carrier. We have previously stated that where an interexchange carrier submits a request that is disputed by a subscriber and the interexchange carrier is unable to produce verification of that subscriber's change request, the LEC must assess the applicable change charge against that interexchange carrier. We codify and expand our prior requirement to encompass any carrier, not just an interexchange carrier, that is unable to provide verification of a subscriber's change request.

the Order as a whole, it appears that the executing carrier is not required to investigate the slamming allegation. That duty is clearly imposed on the authorized carrier when the customer has not paid the charges and no party is specifically directed to investigate the claim when the customer has paid the charges.

Currently, when a customer claims it has been slammed, the LEC has the obligation to request proof of customer authorization and verification from the alleged unauthorized carrier in order to determine if the carrier change charge, for returning the customer to its originally authorized carrier should be assessed. The PIC Switchback offering was tariffed to enable the IXCs to pay for the return of the customer to its formerly authorized carrier on a no-fault basis. This process enables both the IXCs and the SBC LECs to avoid the costly process required to investigate slamming allegations.

Some carriers, particularly those with few slamming complaints, may wish to continue with the PIC Switchback offering and do nothing further. Therefore, the Commission should clarify that SBC's PIC Switchback tariffed offering is not at odds with the Order or the rules.

3. Impact of Billing and Collection Agreements

The next complication occurs when an unauthorized carrier has a billing and collection agreement with the LEC, who is also the executing carrier. If the LEC receives a call from a subscriber claiming to have been slammed, the LEC representative will first pull up the customer's service records to see if the LEC has billed the alleged slamming charges on behalf of the alleged slamming carrier. If so, under current practices, the LEC has the discretion under its billing and collection agreements to immediately credit all of the alleged slamming charges, even if those charges have been billed over a period exceeding 30 days. The LEC will usually do so and adjust those charges back to the carrier. This is a very customer-friendly practice because it provides immediate relief to the customer. At least as to the first thirty day's billing, such action is

consistent with the Order, if the customer has not yet paid the charges. The LEC as billing agent is fulfilling the responsibility of the unauthorized carrier to immediately credit the customer's bill for the unauthorized charges. [ɔ64.1180(b)]

However, if the customer has already paid the charges, the action of crediting the customer's bill for the slamming charges is inconsistent with the obligation of the unauthorized carrier under the Order. The unauthorized carrier's obligation is to remit the charges paid by the customer to the authorized carrier. [ɔ64.1170(a)] If the LEC, as billing agent credits the customer for the charges paid, the carrier will not be holding any of the customer's money, despite the fact that the customer has already paid the charges.[7] Yet, pursuant to the Order and §258 of the Federal Telecommunications Act of 1996 ("FTA96"), the unauthorized carrier must, upon demand, return all charges paid to the authorized carrier. (id.) The practice of immediately crediting the subscriber's account for any alleged slamming charges would appear to be inconsistent with the slamming dispute resolution procedures in the Order. It would change the position of the subscriber, who in this instance would be getting reimbursed from the unauthorized carrier plus a credit from the LEC which is more than he/she is entitled to receive under the Order, as a subscriber who has already paid the slamming charges. It would also change the position of the authorized carrier, who might be denied the recovery of the slamming charges that would be due to it under the terms of the Order, simply because the unauthorized carrier no longer is holding any of the subscriber's money to return to the authorized carrier. It changes the basic assumption of the slamming dispute resolution procedures which is, if the subscriber has paid the charges, the unauthorized carrier is holding the subscriber's money.

[7] Nor will the LEC be holding any of the money as it has refunded that amount to the customer.

One possible solution to this problem could be a clarification that the customer whose bill was paid, including automatic bank drafts, and later complained to a LEC and had the charges removed from their bill is to be treated as a customer who has not paid the bill. Alternatively, the LECs that bill for other carriers could change their billing and collection practice, so that slamming charges would be credited only if those charges had not yet been paid. While this change is technically consistent with the terms of the Order, it would seem to place the customer in a less favorable position after the Order, rather than a more favorable position. SBC seeks clarification as to the status of the subscriber and the carriers when slamming charges have been paid and refunded.

B. Pursuit of Claim

SBC seeks clarification that the duty to pursue the claim against the alleged slamming carrier that is set forth in Rule 64.1170(a) is optional. That portion of the rule states, in pertinent part, that:

> Upon receiving notification from the subscriber or a carrier that a subscriber has been subjected to an unauthorized change and that the subscriber has paid charges to an allegedly unauthorized carrier, the properly authorized carrier **must**, within 30 days, request form the allegedly unauthorized carrier proof of verification of the subscriber's authorization to change carriers. [Emphasis added]

The language of the rule makes it appear that the duty to pursue a claim against the unauthorized carrier is mandatory. However, in the text of the Order, the following statement is made that:

> We require the authorized carrier to notify the subscriber within 60 days after the subscriber has notified the authorized carrier of an unauthorized change, if the authorized carrier has failed to collect from the unauthorized carrier the charges paid by the slammed subscriber. This failure to collect may be due to the slamming carrier's refusal to cooperate, or it may stem from the authorized carrier's decision not to pursue its claims against the slamming carrier.

C. Notification Issue

In order for the dispute resolution procedures outlined in the Order to work, it appears that both the authorized carrier and the alleged unauthorized carrier need to know that a slamming allegation has occurred. In Rule 64.1170(c), there is a requirement that where a "subscriber notifies the unauthorized carrier, rather than the authorized carrier," the unauthorized carrier must immediately notify the authorized carrier of the alleged slam. That rule only applies, however, to situations where the subscriber has already paid charges to the unauthorized carrier and reports the slam to the unauthorized carrier. Of course, in situations where the customer has already paid charges and notifies the authorized carrier, there is no need for a specific "notification" rule, if the authorized carrier makes demand upon the unauthorized carrier for a refund of the charges paid or for proof of verification. But if the authorized carrier elects not to pursue its claim, how is the unauthorized carrier to know the identity of the authorized carrier in order to challenge the slamming allegation? SBC has not located any other sections of the rules that require notification to the carriers, so there does not appear to be a complete structure in place to provide notice to the carriers involved of the other carrier's identity, so that the carriers can meet the deadlines imposed.

For example, a situation could easily arise in which a customer would not call either the authorized or the unauthorized carrier, but would only call the executing carrier to report that he/she has been slammed. This is especially true where either of the carriers involved purchases billing services from the LEC. In this case, the LEC would immediately advise the customer of his/her rights to absolution of all unpaid charges for the thirty day period and then would change the customer back to its originally authorized carrier and assess the applicable change charge. When the change is made to return the customer to its originally authorized carrier, a CARE[8] transaction would be triggered to

[8] "Customer Account Record Exchange," a format for exchange of information between carriers that has been approved by the Open Billing Forum ("OBF").

both affected carriers. The CARE transaction notations would tell the carriers that the change has occurred and that the customer is claiming to have been slammed, but it will not identify the other carrier involved. How will the authorized carrier know the identity of the slamming carrier in order to file its claim, if it chooses to do so, for moneys already paid? If the bill has not been paid, how will the unauthorized carrier know which carrier should receive its proof of authorization? Clarification is needed on the issue of notification.

D. LOA Language and Age

It is very clear in the Order that an executing carrier cannot verify carrier changes, but SBC requests clarification as to whether there should be an age limitation for carrier changes. Many customers take advantage of the carrier incentives to change carriers so frequently that they manage to effectively get free long distance for long periods of time. SBC has seen LOAs dated a year ago authorizing an immediate change in interLATA service and that also has small print at the bottom of the page authorizing the IXC to change the customer's intraLATA toll service when intraLATA choice becomes available.

There are several problems with this type of authorization, and, under the new rules, the intraLATA service change would be invalid because there is no separate signature authorizing that change. Further, the size of the type and placement of the language in this example, makes the LOA misleading to customers. However, since SBC LECs, as executing carriers, cannot verify the change orders, and the change orders may be received in tapes where those defects would not be obvious, there is no way for the executing carrier to challenge the LOAs on those bases. SBC is not here requesting reconsideration of the rule prohibiting the LEC from independently verifying the carrier change order. It is clear under the terms of the Order that any carrier submitting a carrier

change request based upon such a defective LOA would not be able to defend a slamming claim by the customer after the rules go into effect.

However, the submission of those and even legitimate carrier change orders on a delayed basis causes tremendous problems for customers and for the executing carriers. SBC has reason to believe that IXCs are holding thousands of delayed carrier change orders. MCI recently told the Public Utility Commission of Texas that it was already holding 20,000 to 25,000 intraLATA customer change orders. Other carriers may also have large numbers of such changes. Consider this scenario: If a customer signed up for Carrier A's service in August of last year when Carrier A sent them a check as an incentive to change to its service, then changed to Carrier B's service in October to get a free airline ticket, subsequently changing to Carrier C to get cheaper rates, more than one of those carriers may be holding a carrier change order on that customer's intraLATA service. In all likelihood, the customer that has already changed to Carrier C in the example above is not expecting a change back to Carrier A or B and would regard any such change to be a slam.

How is a LEC supposed to handle multiple changes for a single end user especially when the carrier change orders are submitted on an automated basis? If multiple carriers submit aged carrier change orders for the same customer at the same time the customer's carrier could change more than once during a single day as those orders are worked. If the executing carrier has a customer notification system in place, the customer would receive notice of each change. Customers would incur multiple change charges and would be very confused by such hyperactivity. Acceptance of such aged LOAs will lead many customers to believe they have been slammed, in some cases more than once on the same day, when in reality the carriers are just submitting LOAs signed long ago.

There is also a potential processing problem if multiple carriers dump thousands of carrier changes on the day that IntraLATA dialing parity becomes available. It is highly unlikely that under these circumstances, SBC companies will be able to promptly execute all carrier changes without considerable delay under such circumstances. Therefore, SBC requests that the Commission (1) clarify that carrier change orders submitted more than 30 days after the date that the change was authorized by the customer are invalid and should be rejected by LECs, (2) pre-empt any inconsistent state rulings, and (3) clarify that a "reasonable time frame" for executing carrier change orders when intraLATA dialing parity first becomes available will be dependent upon the volume of orders received. This will avoid the unnecessary confusion that will surely take place unless the Commission establishes a cap on the age of LOAs.

E. Responsible Organization Verification

SBC seeks clarification that the previously established and agreed upon industry practice of verifying the Responsible Organization ("RESP ORG") carrier changes for 800 service be recognized as an exception to the Order's prohibition of verification of carrier change requests. When a RESP ORG for 800 service receives a carrier change request, the authorized RESP ORG pulls the authorized signature on the account from the file and compares it to the authorized signature on file. Then, if the signatures do not match, the authorized RESP ORG contacts the customer to verify the carrier change request. This process should be left in place.

F. Executing Carrier

Paragraphs 106 and 132 of the Order suggest that an executing carrier must not use information gained from a carrier change request, nor use the contact with the customer on a three way call to lift a freeze for marketing purposes. Executing carriers, as well as CLECs, however, do have a First Amendment right to market their services to former customers, as noted by the Commission in Paragraph 107. Thus, it would appear

from the Commission's language that carriers are not prohibited from contacting those customers who have gone to competitors **after** the carrier change is completed and the customer has been disconnected, even if the disconnect order codes reveal that the customer's service was disconnected as the result of a carrier change order. The same type of code is transmitted to IXCs as a part of the CARE transaction and is available to CLECs on a disconnect report. Since this same information is available to IXCs and CLECs at the same time that it becomes available to the LEC retail operations, there should be no restriction on the use of that information for LECs, CLECs or IXCs.

III. Conclusion

For all of the reasons set forth above, SBC respectfully requests that the Commission reconsider 47 CFR 64.1180(e) of the Order and allow the alleged unauthorized carrier to bill its own charges where a determination is made that the alleged unauthorized carrier change was in fact properly authorized. In addition, SBC respectfully requests clarification of certain portions of the Order as outlined above.

Respectfully Submitted,

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